IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5419 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMNIK JUGATRAM JANI - Petitioner(s)

Versus

AMARSINHJI MILLS LTD. - Respondent(s)

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Appearance :

MR KJ DWIVEDI for Petitioner No(s).: 1.

PS GOGIA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 01/08/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner workman has challenged the legality and validity of the judgment and order passed

by the Industrial Court, Rajkot dated 24.1.2003 passed in Appeal (IC) No.6/90 in partly allowing the same directing the petitioner to pay an amount of Rs.20,000/-only towards all the benefits available to the petitioner between the period from 1977 to 1983.

2. The petitioner was serving as a Badli Worker with the respondent. It appears that while he was on duty on 30th August, 1983, he met with an accident and his hand was amputated and was having 60% permanent partial disability. It was the case on behalf of the respondent that thereafter, on the basis of medical certificate, he was entitled to light duty work and as he was not offered light duty work, he raised industrial dispute by way of approaching Labour Court, Rajkot being B.I.R. Application No.95/84. The said application was opposed by the respondent mill company by contending inter alia that there is no denial of work by the respondent company and that they are ready and willing to give work to the petitioner workman as per the seniority. It was further submitted that in fact, the petitioner workman has himself stopped coming on duty. The Labour Court on appreciation of evidence held that there is no retrenchment and/or termination by the respondent and the petitioner being Badli Worker, the respondent

company was not supposed to offer work to the petitioner and he has no right to get the work and therefore, the Labour Court, Rajkot by judgment and award dated 22.11.90 did not grant the relief with regard to reinstatement and backwages. However, on huminity ground, directed the respondent to consider the case of the petitioner for some other light duty work, such as water-boy, safaiwala, peon, etc., as and when the Badli work is available. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Rajkot dated22.11.90 passed in B.I.R. Application No.95/84 in not granting backwages and continuity in service, the petitioner preferred an appeal before the Industrial Court, Rajkot being Appeal (IC) No.6/90. However, considering the service of the petitioner even as Badli Worker for the period between 1977 to 1983, the Industrial Court, Rajkot by its judgment and order dated 24.1.2003 directed the petitioner to pay Rs.20,000/-lump sum towards the dues for the aforesaid period. Being aggrieved and dissatisfied with the same the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3.It is not disputed that the petitioner was serving as a

Badli Worker and as held by the Hon'ble Supreme Court in case of ***Karnataka State Road Transport Corporation & Another V/s. S.G.Kotturappa & Another*** reported in ***JT 2005(3) SC P.20***, Badli Worker has no right over the post and they cannot as a matter of right claim for the work. As and when the regular permanent employee/worker and/or even the daily wagers are not available, in that case the Badli Worker are to be offered the works. Under the circumstances, not granting of the backwages and reinstatement by both the Courts below cannot be said to be in any way illegal and/or contrary to the provision of the statute and/or cannot be said as a perverse which requires the interference of this Court in exercise of the powers under Article 226 of the Constitution of India. Even otherwise, the Industrial Court has, considering the period for which the petitioner had worked as a Badli Worker for the period from 1977 to 1983, directed to pay Rs.20,000/- lump sum towards the dues. Not only that this Court is also informed that the petitioner has also got some amount from the Workman Compensation Commissioner. Under the circumstances, it cannot be said that the judgment and order passed by the Industrial Court requires any interference at the hands of this Court. Under the circumstances, the present Special Civil Application

requires to be dismissed and it is accordingly dismissed.

4. However, while dismissing the present Special Civil Application, it is observed that in case, in future, if some light duty work is available, respondent will offer work on the basis of Badli Worker and the case of the petitioner be considered for the reemployment, as observed by the Labour Court, Rajkot in its judgment and award dated 22.11.90. It will be open for the petitioner to accept the said amount of Rs.20,000/-as ordered by the Industrial Court in its order dated 24.1.2003 passed in Appeal (IC) No.6/90 and the respondent is directed to pay the said amount to the petitioner within a period of 6 weeks from the date of receipt of this order. Acceptance of the aforesaid amount of Rs.20,000/- will not come in the way of the petitioner if in future there is an occasion to offer work to the petitioner as per the observation made by the Labour Court, Rajkot made in its judgment and award dated 22.11.90 passed in B.I.R. Application No.95/84.

With these observations and directions, the present Special Civil Application is dismissed.

(M.R.SHAH, J.)

kdc.